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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,897	12/04/2003	Henry Hickman JR.	HHJ-100-B	9569

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Todd L. Moore
YOUNG & BASILE, P.C.
Suite 624
3001 W. Big Beaver Rd.
Troy, MI 48084-3107

EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,897

Applicant(s)

HICKMAN, HENRY

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04 December 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to because *the figure numbers do not correspond to the figure numbers in the specification. Specifically, there is no brief description for figures 4A and 4B in the specification.* Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *visual target indicia as required in claim 11* and *a ribbon fabric intertwined within said elastic mesh netting as required in claim 18* must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office

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action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The Abstract as filed exceeds the required range of 50 to 150 words.

4. The disclosure is objected to because of the following informalities: on page 3, under the heading Brief Description of the Drawings, there does not appear to be a brief description for

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figures 4A and 4B corresponding to the figures. Throughout the specification, with the exception of one or two places, application references to “the support structures 18”. However, only one structure has been shown and described. Clarification and correction is required. Appropriate correction is required for the above objections.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if “a target” in claim 11 is the same target as in claims 10 and 9 or if a different target is being claimed and defined.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 7-11, 13, 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gery (5,333,856).

Regarding claim 1, Gery discloses a throwing and catching training apparatus, comprising: an upright, substantially rigid target panel (backstop member 30); and at least one bumper (the broadest reasonable interpretation of *bumper* would include obscuring members 50)

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connected to said target panel (backstop member 30), and said at least one bumper adaptable to deflect a thrown projectile in a random direction (see figure 5).

Regarding claim 2, Gery further shows at least one support structure (framework unit) connected to said target panel (backstop member 30) for supporting said target panel in an upright position.

Regarding claim 3, Gery shows said target panel (backstop member 30) having a cut-out portion (rectangular opening 37) extending through said target panel for further defining a target.

Regarding claim 4, Gery shows an elastic material (the broadest reasonable interpretation of elastic material would include elongated rectangular sheet 41 made from a flexible material 42) connected to said target panel (backstop member 30) and extending across said cutout portion of said target panel, and said elastic material adaptable to spring a thrown projectile in a reverse direction when said thrown projectile engages said elastic material (when the ball impacts the sheet it springs back outwardly and drops down in the pouch).

Regarding claim 7, note the rejection for claim 1. Additionally, Gery shows a plurality of elastomeric bumpers which are releasably connected (upper and lower rectangular panels 51).

Regarding claim 8, note the rejection for claim 2.

Regarding claim 9, note the rejection for claim 3.

Regarding claim 10, note the rejection for claim 4.

Regarding claim 11, Gery shows a visual target indicia (the obscuring members 50) connected to said elastic mesh netting (see column 2, lines 31-36) for further defining a target.

Regarding claim 13, note the rejection for claims 7 and 8.

Regarding claim 15, Gery shows said bumpers (rectangular panel 51) being equally spaced on said target panel (see figure 1).

Regarding claim 16, Gery shows said target panel (backstop member 30) having a substantially rectangular cutout portion (elongated rectangular opening 37) extending through said target panel for further defining a target (see figure 5).

Regarding claim 17, note the rejection for claim 4.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Gery (5,333,856).

Regarding claim 1, Hoepelman discloses a throwing and catching training apparatus, comprising: an upright, substantially rigid target panel (tubular wall 16); and at least one bumper (protrusions 30) connected to said target panel (16), and said at least one bumper adaptable to deflect a thrown projectile in a random direction (see figure 5).

Regarding claim 6, Hoepelman shows said at least one bumper having a substantially circular, dome-shaped head extending away from said target panel and adapted to deflect the thrown projectile in a random direction (see figure 1).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 5 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geri (5,333,856).

Regarding claim 5, Gery does not expressly disclose the specific material the pair of obscuring members 50 (bumpers) is made from. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the obscuring members from an elastomeric material, because Applicant has not disclosed that forming the obscuring members from an elastomeric material, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the obscuring member taught by Gery or the claimed bumper because both bumpers perform the same function of randomly redirecting the ball. Therefore, it would have been an obvious matter of design choice to modify Gery to obtain the invention as specified in claim 5.

Regarding claim 19, Gery does not expressly disclose the pair of support members (brace elements 23) is releasably connected to opposite sides of said target panel (backstop member 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made Gery's brace elements releasably attachable, in order to make the apparatus readily transportable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179.

12. Claims 7, 12, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geri (5,333,856).

Regarding claim 7, Macosko discloses a throwing and catching training apparatus, comprising: an upright, substantially rigid target panel (mesh netting 26); and a plurality of bumpers (the broadest reasonable interpretation of *bumper* would include target discs 20) releasably (fastening buttons 6) connected to said target panel (mesh netting 26) adaptable to deflect a thrown projectile in a random direction (see figure 1). Macosko does not disclose expressly the specific material the target discs are made from. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the discs from an elastomeric material, because Applicant has not disclosed that forming the discs from an elastomeric material, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the discs taught by Macosko or the claimed discs because both discs perform the same function of randomly redirecting the balls. Therefore, it would have been an obvious matter of design choice to modify Macosko to obtain the invention as specified in claim 7.

Regarding claim 12, Macosko shows said bumpers (target discs 20) further comprising: a stem releasably connected to said target panel (Macosko shows that the target discs 20 are attached to the target panel by means of fastening buttons 6 with have flexible retaining fingers 44 that may be snapped into retaining position, although not explicitly stated, but well known, in order for this process to happen the target discs must have an extension or stem for receiving the fastening button); and a substantially circular, dome-shaped head integral with and extending from said stem (best seen in figure 2), wherein said dome-shaped head extends away from said target panel and is adaptable to deflect the thrown projectile in a random direction.

Regarding claim 13, note the rejection for claim 7. Additionally, Macosko shows a support structure (see figure 2) for supporting said target panel in an upright position.

Regarding claim 18, Macosko shows a ribbon fabric (the broadest reasonable interpretation of *a ribbon fabric* would include large cords²⁸) intertwined within said elastic mesh netting (mesh netting 26) for further defining said target (see figure 3).

Allowable Subject Matter

13. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nally, Janton, Snow, Strain et al; Rogers; Semon; Larson; McDougall; Ziel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
16 February 2005



MITRA ARYANPOUR
PRIMARY EXAMINER